IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.606 OF 1989

Sudhir B.Jamkhindikar ....Petitioner

V/s.

Union of India & Ors. ....Respondents

Mr.P.M. Shah i/b Mr.B.V. Phadnis for the Petitioner.
Mr.D.A. Dubey for Respondent No.1.
Mr.Girish Kulkarni with Mr.S. Khanzode i/b M.V. Kini & Co. for Respondent No.2.

CORAM : A.P. SHAH AND
S.J. VAZIFDAR, JJ.
DATED : 13TH JANUARY, 2005.

P.C. :

1. Respondent No.2 is the Chairman, National Airports Authority. The Petitioner was employed with Respondent No.1 from 1st June, 1985. His services were thereafter transferred to Respondent No.2.

2. The Petitioner has sought an order for quashing the letters/orders dated 13th February, 1987, 28th April, 1987, 12th October, 1987 and 2nd May, 1988. The Petitioner has also sought a direction against the Respondents to treat his letter dated 16th November, 1986 as a letter of discontinuation of

service and not a letter of resignation. In the alternative the Petitioner has sought a direction permitting him to withdraw his letter of resignation dated 16th November, 1986. The Petitioner has further sought a declaration that he continues to be in service of the Civil Aviation Department and therefore entitled to past services with continuity and full back wages. In the alternative, the Petitioner has sought a direction to treat him has having retired from the service on medical grounds or discontinued or terminated his services on medical grounds and to pay him all the service benefits and terminal benefits of his entire past service.

3. The Petitioner has at some length in the Petition dealt with the nature of his work. It involved aeronotical mobile service at airports. He was required to operate communications equipments for the purpose of maintaining contacts, carrying information, receiving and transferring information for the purpose of safety and regular movements of the domestic and international aircrafts. The Petitioner has at some length stated that the nature of his work affected his health severely which put him under enormous stress and strain. According to him the Respondents had not provided sufficient safeguard for

the persons employed in its department.

4. By a letter dated 24th/25th July, 1986, the Respondents transferred the Petitioner to Bhuj in public interest. It appears that the transfer itself was on several representations of the Petitioner regarding pressure of work and resultant poor health suffered by him. The Petitioner however was not willing to be transferred to Bhuj.

5. The Petitioner therefore by the said letter dated 16th November, 1986 tendered his resignation from the post of communication assistant with Respondent No.2 on health grounds. He requested he be relieved from the service on medical grounds and for a waiver of notice period stating that he was unable to report and perform the duties at a remote station as per doctor’s advice.

6. The memo dated 13th February, 1987 recorded that the Petitioner’s resignation had been forwarded for acceptance to the head quarters. It further recorded that he was not entitled to any terminal benefits on resignation and that there was no provision to grant him special disability leave. By a memorandum dated 20th April, 1987, the Respondents

recorded that the Petitioner's resignation had been accepted by the head quarters subject to the condition that no dues were pending against him and that he would be relieved with effect from 16th November, 1986. By a letter dated 12th October, 1987, the Respondents informed the Petition that he would not be entitled to any terminal benefits on resignation. The aforesaid two memoranda and the said letter have been impugned in this Writ Petition.

7. Before us the only point that was urged was that the Petitioner would be entitled to invalid pension under Rule 38 of the Central Civil Services (Pension) Rules, 1972 which reads as under :-

> "38. Invalid pension : (1) Invalid pension may be granted if a Government servant retires from the service on account of any bodily or mental infirmity which permanently incapacitates him for the service.
>
> (2) A Government servant applying for an invalid pension shall submit a medical certificate of incapacity from the following medical authority, namely :-
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> a Medical Board, in the case of a Gazetted Government servant and of a non-gazetted Government servant whose pay, as defined in Rule 9 (21) of the Fundamental Rules, exceeds seven hundred and fifty rupees per mensem :

> Civil Surgeon or a District Medical Officer or Medical Officer of equivalent status in other cases."

8. In order to ascertain whether it would be possible for this Court to assist the Petitioner in any manner, by an order dated 4th November, 2004, this Court recorded that in view of the peculiar facts and circumstances of this case, the Petitioner's case could be considered for grant of pension as per Rule 38. The learned counsel appearing for the Petitioner stated that the Petitioner would submit all the relevant medical records to the Respondents within a period of two weeks. The learned counsel appearing on behalf of Respondent No.2 stated that the Petitioner's case would be considered by the Medical Board as per Rule 38 (2) of the said Act and that the Medical Board would submit their report after examining the Petitioner.

9. The Petitioner was accordingly examined by the Medical Board. The Superintendent of G.T. Hospital filed the report dated 13th December, 2004 which states that the Petitioner had been referred to the hospital for Medical Examination on 8.12.2004. According to the Medical Board, he was found to have diabetes and hypertension and was advised regular

treatment for the same.

10. This report however, does not bring the Petitioner's case within the ambit of Rule 38. Neither the report nor what is stated therein indicate that the Petitioner retired from service on account of any bodily or mental infirmity which permanently incapacitated him for the service. The report does not even state or indicate that even as on date the Petitioner is permanently incapacitated for the service. In the circumstances, it is not possible for us to direct the Respondents to grant the Petitioner benefit of invalid pension.

11. The other reliefs were not pressed for and indeed are not maintainable. The Petitioner admittedly resigned from his job. There is nothing on record which entitles him to revoke the resignation voluntarily tendered by him.

12. In the circumstances, the Petition is dismissed. There shall be no order as to costs.